

#190

The Ontario Human Rights Code, R.S.O.
1980, c. 340, as amended.

IN THE MATTER OF the complaint made by Mr. Naurice
Allan Baldwin of Toronto, Ontario, alleging
discrimination in housing by Javuntheanball
Soobiah, 192 Bingham Avenue, Toronto, Ontario.

REC'D O.H.R.C.	
INITIAL	DATE
DEC	2 1983

BOARD OF INQUIRY

D.A. Soberman

Appearances :

Ms. Bella Fox	-	Counsel for the Ontario Human Rights Commission and the Complainant, Mr. Naurice Allan Baldwin
Ms. Javuntheanball Soobiah	-	Without counsel.

The complainant, Mr. Naurice Baldwin, is a black man from Trinidad, who claims that the respondent, Ms. Javuntheanball Soobiah, discriminated against him with respect to housing accommodation in violation of section 3(1)(a) and (b) of the Ontario Human Rights Code. The parties disagree substantially on the facts, Accordingly, I shall set out the facts as submitted by the complainant to determine whether they establish discrimination, and if so, whether the conflicting evidence of the respondent effectively overcomes that finding.

In January 1980, the complainant and his then fiancée, now Mrs. Baldwin (I shall refer to her as Mrs. Baldwin), were tenants at 71 Pickering Street in east Toronto. Mrs. Baldwin came to Canada from Belgium in 1978 and speaks English with a slight European accent. The complainant had just recently moved to Pickering Street to join his fiancée, and they found the premises too small. Accordingly, they gave notice to the landlord that they would vacate at the end of the month and began to look for an apartment, with no success until January 29. That day a copy of a local paper, the Ward Nine News, was delivered to the house. The landlord, Mr. Bernard Fletcher, saw an advertisement for an apartment in the paper, and shortly before 10:00 p.m. he showed it to Mrs. Baldwin. She telephoned the number in the ad, and on learning that the apartment was just a few blocks away, arranged for her and the complainant to drive there at once.

The respondent met the Baldwins and showed them the apartment. Mrs. Baldwin decided that she liked it and wanted to take it. The respondent then asked for the first and last months' rent in advance. As Mrs. Baldwin prepared to write a cheque, she asked the respondent to confirm that rent was \$300 per month as stated in the advertisement. The respondent said that there must have been a mistake in the ad because the rate she wanted was not \$300, but \$350. The Baldwins had not brought the newspaper with them nor had the respondent yet received a copy. It was then agreed that the respondent would obtain a copy of the newspaper the next day to satisfy herself of the advertised figure and would telephone Mrs. Baldwin at her office the following day. The complainant's work kept him on the road making it difficult to reach him by telephone. The respondent did not say whether she was prepared to rent at the figure stated in the ad, or whether she would continue to seek a tenant at the higher figure. At that point the Baldwins departed.

The following morning at about 11:00 o'clock, the respondent telephoned Mrs. Baldwin, stating that the \$300 figure was indeed a misprint, but that in any event she had rented the apartment at \$350 to another couple who had arrived after the Baldwins left her the preceding evening. The evening of January 30, the complainant and Mrs. Baldwin discussed the call from the respondent, and they became suspicious that perhaps the respondent had not told the truth and that she had simply seized the

occasion of the claimed discrepancy in the ad to avoid renting the apartment to them. In particular, he and Mrs. Baldwin wondered about the arrival of another person searching for an apartment so late in the evening; they had not left the respondent until 10:30 p.m. or so. They decided to verify whether the apartment had indeed been rented. At that point, they discussed the matter with Mr. Fletcher, and he agreed to telephone the respondent to inquire about the apartment. In the presense of the Baldwins, Mr. Fletcher dialed the number in the advertisement -- the same number used to contact the respondent the preceding evening -- and spoke to a woman who answered. Mr. Fletcher was informed that the apartment was still available and at the rate of \$300 per month. Mr. Fletcher is a white, Canadian school teacher who speaks with a usual Canadian accent. When Mr. Fletcher reported his conversation with the woman on the telephone, the complainant believed his suspicions were confirmed. He decided to ask a fellow Trinidadian to make a similar inquiry of the respondent. Accordingly, he telephoned Mr. Toney Burris, gave him the number in the ad and asked him to inquire about the apartment. Mr. Burris speaks with a West Indian accent. He returned the complainant's call within a few minutes and told the complainant that a woman answered the telephone and informed him that the apartment was not available. At that point the Baldwins asked the other tenant at 71 Pickering Street, Mr. Neil Glenn, a white Canadian who like Mr. Fletcher speaks with a usual Canadian

accent, to call the respondent's number and ask about the apartment. Mr. Glenn made the call and reported, as had Mr. Fletcher, that the apartment was still available at the advertised price of \$300 per month.

At this point the Baldwins became convinced that the respondent was discriminating against people who came from the West Indies in refusing to rent her apartment to them while saying that it was available to others who seemed to be white Canadians. The next day the complainant went to the Ontario Human Rights Commission to file a complaint. Two days later, Mrs. Baldwin, wondering whether the respondent's apartment was still available decided to visit her. The respondent told her that the apartment was rented. The parties had no further contact after that meeting.

At this point it is appropriate to ask whether the evidence of the complainant and his witnesses establishes a prima facie case of discrimination by the respondent. contrary to Ontario Human Rights Code, as claimed by the complainant. There is no evidence before me of statements by the respondent that she is biased against black people or west Indians of any colour. Indeed, the respondent is a dark skinned East Indian born in South Africa and denies any intention to discriminate against the complainant. We should note that at the initial meeting until Mrs. Baldwin prepared to make out a cheque for the rent, there was no evidence that the respondent would have refused to rent

the apartment to the complainant. We can only speculate on whether she would have accepted a cheque for rent at the rate of \$350 per month. However, let us assume that in the circumstances she would have accepted a cheque for the larger sum. The fact is that the ad stated a price of \$300, and the delay gave her the opportunity for finding an excuse -- that the apartment was already let -- and thus to avoid the embarrassment she was not otherwise prepared to confront, of refusing to rent the apartment to the man who was present in person.

The suspicion of the Baldwins caused by the telephone call to Mrs. Baldwin the day following the viewing of the apartment seems to me to have been understandable in view of the late hour. The suspicion would have been allayed, had Mr. Fletcher's telephone call produced a reply that the apartment had been rented. On the contrary, the news that the apartment was not only available but available at \$300 was in direct conflict with the information given by the respondent in the morning telephone call. At that point, it seemed reasonable to conclude that the respondent had lied to Mrs. Baldwin, and it was not unreasonable to draw an inference that the reason for the lie was an unwillingness to rent the premises to the complainant. At that point, the conduct of the respondent was consistent with an intention to discriminate, but it might also have been consistent with an intention not to rent to the complainant on other grounds, such as that she found him overbearing or untrustworthy.

We then have the reply to the subsequent telephone inquiry by Mr. Burris that the apartment was no longer available. Mr. Burris has a distinctly West Indian accent as he himself readily stated and as I observed. If the apartment was still available when he called the respondent's number, then the pattern of conduct would seem established: a refusal to rent to the complainant who is West Indian; willingness to rent to Mr. Fletcher who is a white Canadian; a subsequent refusal to rent to Mr. Burris who is also West Indian. The remaining possibility that might nullify this inference would be evidence that in the interval between the telephone calls by Mr. Fletcher (apartment still available) and that by Mr. Burris (apartment not available), a third person had appeared and rented the apartment. Then we would be back to the ambiguous inferences that might be drawn after Mr. Fletcher's call. However, the possibility of a third person renting the apartment during that interval was removed by the third and last call of the evening made by Mr. Glenn. His call established that the apartment was still available when he called after Mr. Burris had called. Since Mr. Glenn spoke with a usual Canadian voice, the response to his inquiry further reinforced the inference that the respondent was willing to rent to a person who was not a West Indian.

In my opinion the result of this evidence is to establish a clear prima facie case of an intention by the respondent to discriminate against the complainant in

refusing to rent the apartment to him because of his race, colour, nationality or place of origin, contrary to the Ontario Human Rights Code.

The respondent's evidence differs from that of the complainant and his witnesses in most respects. These differences may in part be the unfortunate result of the lapse of almost four years between the events and the hearing. Some of the differences are significant only in that they emphasize the gap between one party's recollection of the events and the other party's recall of the same incident. For example, the respondent recalled that Mrs. Baldwin told her that she had gone to the public library in order to obtain a copy of the Ward Nine News as early as possible. This evidence is in direct conflict with that of both Mrs. Baldwin and Mr. Fletcher, her landlord, who stated that he showed her the advertisement in his copy of the newspaper.

On one essential matter the parties agree: the respondent asked for the first and last months' rent and when Mrs. Baldwin mentioned the rate of \$300 quoted in the ad, the respondent corrected her and stated that it was \$350. However, the respondent recalled that she agreed to telephone Mrs. Baldwin the following day, not to confirm the rate in the ad, but only to let her know if the apartment had been rented.

According to the respondent, she did not rent the apartment the evening of the Baldwins' visit, but went straight to work as a nurse on the night shift.

When she got home the next morning, she received a telephone inquiry from a Mr. and Mrs. Leesard who had just arrived from Manitoba; they came to the house shortly afterward and rented the apartment that morning at \$350 per month. The respondent then telephoned Mrs. Baldwin's office, left a message that the apartment was taken, and went to bed. In mid afternoon, she left the house to work the 4:00 p.m. to midnight shift as a nurse. According to this testimony, she was not at home during the evening of the three telephone inquiries about the apartment made by Messrs. Fletcher, Burris and Glenn. The respondent further stated that no one else had a key or any other access to her living quarters in the house and that even the apartment above was still empty that evening. She stated that she did not receive the calls, knew nothing about them nor could she offer any explanation of how they came to be made to what appeared to have been her telephone number.

Thus we are confronted with a direct conflict of evidence. No suggestions were offered to explain away this conflict and thus to allow both versions to stand. No reasonable doubt has been raised to suggest that the three telephone calls by Messrs. Fletcher, Burris and Glenn were not made to the residence of the respondent; they obtained the number from the same source, the advertisement which Mrs. Baldwin had used to reach the respondent the night before. The respondent denied that

any third person had access to her house and she has not suggested that there was an unauthorized entry to the house the day of the calls. It follows then, that only one side can be telling the truth. The three witnesses who made the telephone inquiries had no interest or incentive not to tell the truth: they are acquainted with the Baldwins but are not close friends and have not seen them in the preceding three years or so. They and the Baldwins gave their stories simply and credibly. The level of detail was consistent with what one might expect after almost four years. Accordingly, I find that their version of the events is a believable one.

On the other side, there are aspects of the respondent's testimony that raise doubts. First, she could produce no evidence, no personal records whatever, such as a notebook showing the names of any tenants or the amounts of rent paid per month during the years 1979, 1980 or any later years. She stated that she did not keep such records. As a result, officers of the Commission were unable to contact any tenants to verify the monthly rent charged by the respondent immediately before or after the events of late January 1980. In March 1981, she permitted an officer of the Ontario Human Rights Commission to photocopy a current rent cheque not yet cashed, in the amount of \$360 - from a tenant subsequent to the Leesards. However, that cheque raises no inference about the amount of rent charged to the Leesards on January 30, 1980. Efforts by the Commission to trace tenants under

the name of Leesard also proved futile.

Second, the respondent did not produce any evidence of her work schedule, nor did she offer any help in discovering where she had worked the evening of January 30, 1980. She was aware of a complaint of discrimination against her within a few days of the events, although the specifics of the complaint may not have been spelled out until an interview a year later. The respondent stated that she worked in many different hospitals and sometimes in private residences as the need arose, in her capacity as a relief nurse who worked irregular shifts. In any event when she was questioned about the nature and availability of hospital records, she made no effort to search for them. We are left only with the respondent's assertion that she was not at home and with no corroborative evidence.

In contrast to this absence of written evidence, the respondent, when she gave her evidence of the events of January 29 and 30, 1980, was aided by notes. When counsel for the Commission questioned whether these notes were made contemporaneously by the respondent at the time of the disputed events, she stated that definitely she had made them then, and not recently for the purposes of the hearing of this complaint. If, as it appeared to me, the notes were made all at one time, shortly before and with a view to the hearing, then the respondent is not to be believed. On the other hand, if the notes were made contemporaneously as claimed by the respondent

because, as she stated, she made them "as soon as some problem arises", this conduct seems inconsistent with the complete failure to keep other records of tenants and rent, and of when and where she worked. She kept surprisingly careful notes of disputed events, but none of transactions which it is more usual to record.

For these reasons -- the credibility and disinterest of the witnesses for the complainant and the plausibility of their evidence, and the inconsistencies in the evidence of the respondent as well as the absence of any corroborative evidence -- I accept the testimony of the complainants as true and reject that of the respondent. Accordingly, I find that the respondent did discriminate against the complainant in violation of section 3(1)(a) of the Ontario Human Rights Code, 1980, Chapter 340, as amended, by denying him occupancy of her apartment.

Remedy

The complainant has not stated that he suffered any financial loss as a result of the respondent's conduct. He and his fiancée seem to have found other suitable accommodation. However, as has been frequently acknowledged in cases of discrimination, the victim suffers a loss of dignity, a feeling of humiliation and a concern that he has been unfairly judged. Accordingly, it is appropriate to make an award of damages to recognize rather than to


compensate for the loss suffered. It would seem that an amount equal to one month's rent at the time of the incident as stated by the respondent herself, that is \$350, is a suitable sum for an award. The complainant suggested that any award of damages be paid to the Universal African Improvement Association, a society dedicated to the improvement of race relations. That suggestion seems to be an appropriate one.

O R D E R

For the reasons set out above, and upon finding that the complaint has been substantiated.

It is ordered that the respondent pay the sum of \$350 by way of compensation to the complainant, the sum to be paid as requested by him to the Universal African Improvement Association.

DATED at Kingston the 30th day of November, 1983

A handwritten signature in dark ink, appearing to read 'D.A. Soberman', is written over a horizontal line.

D.A. Soberman

Chairman, Board of Inquiry

